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March 8, 2004

VIA OVERNIGHT DELIVERY AND ELECTRONIC MAIL

Ms. Mary Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, Massachusetts 02110

Re: DTE 03-60: Proceeding by the Department of Telecommunications and Energy on its Own Motion to Implement the Requirements of the Federal Communications Commission's Triennial Review Order Regarding Switching for Mass Market Customers

Dear Secretary Cottrell:

Pursuant to the March 4, 2004 procedural Memorandum of the Massachusetts Department of Telecommunications and Energy (the "Department") in the above-referenced proceeding, Broadview Networks, Inc., BullsEye Telecom, InfoHighway Communications Corporation, McGraw Communications, Inc. and Metropolitan Telecommunications, Inc. (together, the "CLEC Coalition"), and DSCI Corporation ("DSCI"), through counsel, hereby submit the following comments to the Department on the Expedited Motion of Verizon Massachusetts to Stay Track A of this Proceeding. In its Motion, Verizon Massachusetts ("Verizon") seeks an immediate stay of the Department's proceeding to implement the Federal Communications Commission's Triennial Review Order ("TRO") in light of the decision issued by the United States Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit").¹ The CLEC Coalition and DSCI hereby oppose Verizon's Motion on the grounds set forth below.

The CLEC Coalition and DSCI submit that Verizon's Motion is premature and should be rejected. The *USTA II* decision, which Verizon cites in urging the Department to "immediately" stay this proceeding, will not be effective for at least sixty (60) days, and may not

¹ See *United States Telecom Association v. Federal Communications Commission*, Docket No. 00-1012 (D.C. Cir. 2004) ("*USTA II*").

ever be put into effect if a stay is issued.² Indeed, the Federal Communications Commission (the "FCC") and several other parties have indicated their intent to seek a stay of the D.C. Circuit's decision from the United States Supreme Court. Moreover, the D.C. Circuit recognized that the FCC may very well rely upon facts and information gathered by the Department in resolving unbundling issues, and therefore the record developed in this proceeding will provide a very useful tool to the FCC in examining the actual state of impairment in Massachusetts in the further proceedings resulting from the *USTA II* decision. On the date of D.C. Circuit's *USTA II* decision, discovery in this proceeding was near completion, multiple rounds of testimony had been taken, and witnesses had been scheduled for hearings in late March. Therefore, the Department, like state commissions in New York, Connecticut, Georgia and Oklahoma, should adhere to its schedule and complete the fact-finding portion of this proceeding.

While the CLEC Coalition and DSCI urge the Department to deny Verizon's Motion and to go forward with this proceeding, to the extent that the Department grants Verizon's Motion, the Department should, at a minimum, adopt measures similar to those adopted by the Florida Public Service Commission that will ensure that the extensive written record already developed in this proceeding will be available to the FCC if necessary, or alternatively, allow the Department to resume this proceeding at the appropriate time. Specifically, the CLEC Coalition and DSCI urge the Department to take the following steps: (1) require all parties to stipulate to the admission of all discovery responses, pre-filed testimony and associated exhibits into the record of this proceeding; (2) enter into the record of this proceeding all discovery responses, and all pre-filed testimony and associated exhibits filed by the parties; (3) permit parties the right to cross examine witnesses if/when this proceeding recommences; (4) hold this proceeding in abeyance, pending the outcome of the various appeals of the D.C. Circuit decision and any FCC action; and (5) schedule a status conference for thirty (30) days after the issuance of the Department's order holding this proceeding in abeyance to assess the status of the TRO.

² *Id.* at 62 (noting that the portions of the TRO vacated by the DC Circuit will be stayed until "no later than the later of (1) the denial of any petition for rehearing or rehearing en banc or (2) 60 days from today's date").

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The CLEC Coalition and DSCI, subject to review of the specific terms, supports Verizon's offer to voluntarily forebear from seeking relief from the FCC in the event that this proceeding is not completed by the Department by July 2, 2004, the nine month deadline established in the TRO for completing state impairment proceedings. The extensive record compiled by the Department in this proceeding will be critical to resolution of the issues raised by the D.C. Circuit and necessary to ensure that a framework for competition exists in Massachusetts.

Respectfully submitted,

A handwritten signature in black ink, reading "Brett Heather Freedson". The signature is written in a cursive, flowing style.

Brett Heather Freedson

cc: Service List (via email)